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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,284	09/08/2004	Wendy L. Welshans	65,235-004	5283

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HOWARD & HOWARD ATTORNEYS, P.C.  
THE PINEHURST OFFICE CENTER, SUITE #101  
39400 WOODWARD AVENUE  
BLOOMFIELD HILLS, MI 48304-5151

EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/711,284	<b>Applicant(s)</b> WELSHANS, WENDY L.	
	<b>Examiner</b> Son T. Nguyen	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 9/8/04 & 6/3/05.  
2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.  
4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-24 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 08 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/8/04 &amp; 10/28/04</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. The restriction requirement mailed on 5/17/05 contains errors which the Examiner wishes to correct. Mainly, the restriction was done under a PCT Rule 13.1, which should not be so because Applicant's application is not a 35 USC 371 case, and should have been restricted based on US restriction practice. In any event, the restriction requirement is still proper and should be as follows:

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-9, drawn to a method of farming members of the Phylum Arthropoda, classified in class 119, subclass 6.5.

II. Claims 10-24, drawn to a housing assembly for farming members of the Phylum Adhropoda, classified in class 119, subclass 416.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process, invention I, as claimed can be practiced by another materially different apparatus or by hand. For example, the materially different apparatus would be providing a jar or container with a lid having opening for ventilation for housing the spider, or merely just a regular house where the spider can occupied the corner of the house to spin its web.

Art Unit: 3643

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. In response to the restriction requirement mailed on 5/17/05, Applicant has elected invention II. As mentioned above, although made in error, the restriction on 5/17/05 is similar to the new restriction above, thus, to expedite prosecution, Applicant has elected invention II, which will be examined regardless of the new restriction.

Applicant's election with traverse of invention II in the reply filed on 6/3/05 is acknowledged. The traversal is on the ground(s) that it is not burdensome for the Examiner to search because the restriction on 5/17/05 does not disclosed specific classifications. The above new restriction contains specific classifications for invention I and II, therefore, Applicant's argument has been answered. As pointed out in the above, inventions I and II are process and apparatus, thus, the restriction is still deemed proper and is therefore made FINAL. Since Applicant has elected invention II, claims 10-24, invention I, claims 1-9 have been withdrawn from further consideration.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 10,11,15,19-21** are rejected under 35 U.S.C. 102(b) as being anticipated by Tillinghast (2331).

For claims 10 & 11, Tillinghast teaches a housing assembly that is capable of being used for farming members of the Phylum Arthropoda in a centralized location to collect silk therefrom, said assembly comprising: a wall (not numbered but in the area of refs. c & e, the strips of wood to build the house) establishing an outer periphery defining a work space (interior of house) having a foot print of a predetermined area and defining a plurality of frames (A) therein, each of said frames (A) defining an open frame space (the open spaces in the area of refs. c,e,A) having a predetermined area that is capable of being used for housing the members of Phylum Arthropoda to create a web therein; a roof (B) supported by said wall for covering said frames and said work space, and said assembly characterized by a ratio of said predetermined area of said open frame space to said predetermined area of said foot print of at least 1:5 or 1:9 to prevent territoriality of the members of Phylum Arthropoda (the open spaces near refs. c,e,A and the floor plan of the housing is at least 1:5 or 1:9 ratio).

For claim 15, Tillinghast teaches wherein said frames further comprise a top member (thickness of the wood strip surrounding the opening), a bottom member (thickness of the wood strip surrounding the opening), and side members (the thickness of ref. A).

For claim 19, Tillinghast teaches wherein said wall further comprises a plurality of walls (each wood strip) establishing said outer periphery.

For claim 20, Tillinghast wherein each of said walls have at least one frame (A) defined therein.

For claim 21, Tillinghast teaches wherein each of said walls is further defined as having a plurality of frames (A) defined therein.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 12-14,16,17,22,23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Tillinghast (as above).

For claim 12, Tillinghast is silent about wherein said predetermined area of said open frame space is further defined as at least four square feet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the predetermined area of said open frame space of the housing of Tillinghast be defined as at least four square feet, depending on how much air/ventilation the user wishes to circulate in the housing.

For claim 13, Tillinghast teaches on page 1, lines 93-103 that the predetermined area of said foot print is further defined as at least seventy-five square feet to accommodate for vehicle or hand cart etc.

For claim 14, Tillinghast teaches eaves on page 2, line 32, but is silent about the eaves extending perpendicularly beyond said wall a predetermined distance of at least two feet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the eaves of Tillinghast extend perpendicularly beyond

Art Unit: 3643

said wall a predetermined distance of at least two feet, depending on how much one wishes to cover the frames from environmental conditions.

For claim 16, Tillinghast is silent about wherein said side members, said top member, and said bottom member are each at least three feet long. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have side members, top member, and bottom member of Tillinghast be each at least three feet long, depending on how big one wishes the opening to be for ventilation.

For claim 17, Tillinghast teaches on page 1, lines 93-103, wherein said predetermined area of said foot print is further defined as at least ten feet by ten feet (five feet between frames and at every eighteen or twenty feet, there is a space about five feet across the frames, which indicates that the floor plan is at least 10 by 10).

For claim 22, see claim 12.

For claim 23, see claim 13.

10. **Claim 18** is rejected under 35 U.S.C. 103(a) as being unpatentable over Tillinghast (as above) in view of Landon et al. (5247901).

Tillinghast is silent about a light source disposed within said work space. Landon et al. teach an animal containment in which they place a light inside the containment. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a light source as taught by Landon et al. in the housing of Tillinghast in order to provide lighting to the dark interior.


11. **Claim 24** is rejected under 35 U.S.C. 103(a) as being unpatentable over Tillinghast (as above) in view of Mead (2416037).

Tillinghast is silent about a netting covering said frames. Mead teaches an enclosure for silkworms in which he employs a netting 38 (see fig. X) to prevent predator such as a bird to prey on the silkworms inside the enclosure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a netting as taught by Mead covering the frames of Tillinghast in order to prevent predator(s) from preying on the insects contained in the housing.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn